Statement of Senator Dianne Feinstein
In Opposition to the Nomination of William Pryor

June 9, 2005

Washington, DC – *The United States Senate today approved the nomination of William Pryor to the Eleventh Circuit Court of Appeals. U.S. Senator Dianne Feinstein (D-Calif.) opposed this nomination and entered the following floor statement into the Congressional Record:*

"I would like to discuss the nomination of William Pryor to the Eleventh Circuit Court of Appeals. I have closely reviewed Judge Pryor's record, and based upon it, I believe that Judge Pryor would have difficulty putting aside his extreme views in interpreting the law. Consequently, I do not believe that Judge Pryor should be confirmed to a lifetime appointment on the Eleventh Circuit Court of Appeals.

Before President Bush's recess appointment of William Pryor to the Eleventh Circuit in February 2004, Pryor had not been a judge. As a result, he lacks a record as a sitting judge through which his judicial temperament and impartiality may be examined. Consequently, one must look to Judge Pryor's actions and statements throughout his career.

In his career, Judge Pryor has primarily been a politician, and considering the vehemence with which he has advocated his political views, I have serious concerns that he can set aside those views and apply the law in an independent, non-partisan fashion.

First, I want to be very clear about one thing. My objection to confirming Judge Pryor to a lifetime seat on the Eleventh Circuit Court of Appeals has nothing to do with Judge Pryor's personal religious beliefs.

There are those who have been spreading the false statement that some Democrats vote against judicial nominees because of a nominee's religious beliefs. And that has been said about me. The majority leader even had on his Web site a newspaper column that says I voted against Judge Pryor because of his religious beliefs.

So I went back and I took a look at my statement on the floor, and I took a look at my statement in the Judiciary Committee markup, and they are both clear that my concerns with Judge Pryor have nothing to do with his religious beliefs. As I stated before this body in July of 2003:

> ‘[M]any of us have concerns about nominees sent to the Senate who feel so very strongly and sometimes stridently and often intemperately about certain political beliefs, and who make intemperate statements about those beliefs.
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> So we raise questions about whether those nominees can truly be impartial, particularly when the law conflicts with those beliefs.
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> It is true that abortion rights can often be at the center of these questions. As a result, accusations have been leveled that, at any time reproductive choice becomes an issue, it acts as a litmus test against those whose religion causes them to be anti-choice.
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> But pro-choice Democrats on [the Judiciary Committee] have voted for many nominees who are anti-choice and who believe that abortion should be illegal -- some of whom may. . . have been Catholic. I don't know, because I've never inquired.
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> So this is truly not about religion. This is about confirming judges who can be impartial and fair in the administration of justice.’

Before the Judiciary Committee, I said of Judge Pryor that, ‘I think his faith speaks favorably to his nomination and to his commitment to moral values, which I have no problem with. I would like people in the judiciary with positive and strong moral values.’

I am troubled that legitimate and serious concerns over Judge Pryor and other nominees have been brushed aside, and instead it is said that we on this side are trying to make a case against people of faith. That simply is not true.

Thomas Jefferson wrote of the Establishment Clause of the First Amendment, ‘I contemplate with sovereign reverence that act of the whole American people which declared that their legislature should “make no law respecting an establishment of religion or prohibiting the free exercise thereof,” thus building a wall of separation between church and State.’

The Supreme Court has written that ‘the most important of all aspects of religious freedom in this country [is] that of the separation of church and state.’

It is because the separation of church and state ensures religious freedom, that some of Judge Pryor’s actions and statements concern me.

There are those who have minority-held religious views. There are those who have majority-held religious views. But one of the beautiful things about America is that it is a pluralistic society and that the government has stayed out of religion. The founding fathers, looking at the history of Europe, recognized the sectarian strife and religious oppression that can arise from favoring one religion over another. They came here and they founded a government where there was to be a distinct line drawn between government and religion, and it has served this country well.

So when people confuse arguments that are made to support the separation of religion and government with an opposition to people of faith, they could not be more wrong. And I think this has to be made increasingly clear. We've all seen the inflammatory ads. We've all heard the commercials.

I hope that a more responsible tone will be struck, because the value of the separation between church and state is based on the fact that once that bright line is broken, what one has to grapple with is which religion do you put in the courtroom? Which religion do you allow to be celebrated in a governmental framework?

If the separation of church and state, that has been a part of this nation since its founding, is abolished, these become very real and very disturbing questions.

Accordingly, I am extremely concerned by Judge Pryor's actions and statements promoting the erosion of the division between church and state.

As Deputy Attorney General and Attorney General of Alabama, Judge Pryor vigorously defended the display of a statue of the Ten Commandments in the Alabama Supreme Court. However, when questioned about whether it would be constitutional to display religious artifacts or symbols from other religions in the court room, Pryor was noticeably silent.

According to an April 4, 1997 Associated Press account, Pryor said that 'the state has no position on whether [the Alabama Supreme Court Chief Judge's] right to pray and have a religious display in his courtroom extends to people of other faiths.' That Judge Pryor did not take that opportunity to make clear that all religions are equal before our courts is distressing.

Also while Deputy Attorney General, Judge Pryor defended the Alabama Supreme Court Chief Judge's practice of having Christian clergymen give prayers when jurors first assembled in his courtroom for a trial. Judge Pryor sought to have an Alabama trial judge declare this practice constitutional under the U.S. and Alabama Constitutions. The trial judge ruled against Pryor, concluding that the prayer was unconstitutional.

The judge cited the Chief Judge's own statements that 'acknowledged that through prayer in his court, he is promoting religion.' Pryor's decision to pursue this case despite the Chief Justice's own admission that the prayer was intended to promote religion – thereby violating the Establishment Clause of the Constitution – is perplexing.

It is imperative that our judges – particularly judges on our Courts of Appeals – respect and follow the law, especially the Constitution. I do not believe that a lawyer with Judge Pryor's record of consistent attacks on the Establishment Clause and the separation of church and state enshrined therein should be given a lifetime appointment to the Eleventh Circuit.

Another concern I have with Judge Pryor is the extreme positions he has advocated regarding a woman's right to choose. I have voted for numerous anti-choice judicial nominees. However, Judge Pryor's positions are beyond the mainstream even of those who oppose the right

to choose. Furthermore, his incendiary remarks on the subject demonstrate not only a lack of appropriate judicial temperament, but a lack of respect for the Supreme Court.

Judge Pryor opposes abortion even in cases of rape and incest and supports an exception only where a woman's life is endangered. He has called Roe v. Wade 'the worst abomination of constitutional law in our history,' and said, 'I will never forget January 22, 1973, the day seven members of our highest court ripped the Constitution and ripped out the life of millions of unborn children.'

As Attorney General of Alabama, Judge Pryor called Roe and Miranda v. Arizona, the well known Supreme Court decision requiring that criminal defendants be informed of their right to remain silent, 'the worst examples of judicial activism.' This depth of hostility to the established precedent of the Supreme Court is disquieting in an appellate court nominee.

At his confirmation hearing, Judge Pryor had the opportunity to clarify or step back from these inflammatory remarks. Nevertheless, he stood by his statement that Roe is the 'worst abomination of constitutional law in our history' – worse than the Plessy v. Ferguson, the decision upholding segregation, the Dred Scott decision, which denied citizenship and court access to all slaves and their descendants, or the Korematsu case, validating the government's internment of Japanese citizens during World War II.

That a nominee for a court just below the Supreme Court believes that an existing precedent of the Supreme Court protecting a woman's right to choose is worse than long discredited decisions denying blacks citizenship or permitting segregation is deeply disturbing and out of line with the last hundred years of American jurisprudence.

In statements addressing the scope of federal government, Judge Pryor has promoted a role so limited that the federal government would be forced to abdicate many of its central responsibilities. For example, he has stated that Congress 'should not be in the business of public education nor the control of street crime.'

I do not believe that the federal government should ignore critical matters like education and crime, and neither do most Americans. However, my larger concern is not that Judge Pryor's position is contrary to my viewpoint or even that it is contrary to the views of most Americans, but that it is contrary to binding Supreme Court precedent establishing the breadth of the federal government's powers.

This extremely limited view of the role of federal government is reflected in the positions Judge Pryor has taken on a number of important issues.

Testifying before the Judiciary Committee as Attorney General of Alabama in 1997, Judge Pryor urged the repeal of Section 5 of the Voting Rights Act, calling it an "affront to federalism, and an expensive burden that has far outlived its usefulness."

Section 5 of the Voting Rights Act requires any changes in voting laws in states with a specific history of voting discrimination to be pre-cleared by the Justice Department or the

Federal District Court in Washington D.C. to ensure they have no discriminatory purpose or effect. In this way, Section 5 of the Votings Rights Act has been a critical tool in guaranteeing the voting rights of minorities.

Today, Section 5 of the Voting Rights Act continues to ensure voting rights. In the last ten years, Section 5 of the Voting Rights Act has been applied in more than a half-dozen states to ensure that districts are not redrawn to intentionally dilute minority votes and that polling places are not moved for the primary purpose of discouraging minority voting.

Judge Pryor's strong criticism of this important safeguard of civil rights, particularly on federalism grounds – meaning he believes that the federal government has no right to intervene, even where a citizen's right to vote is threatened – concerns me.

One of Judge Pryor's legacies as Attorney General of Alabama is his effort to weaken and undermine Americans with Disabilities Act, passed in 1990 to protect the rights of the disabled. For example, in Tennessee v. Lane, Pryor, then Attorney General of Alabama, submitted an amicus brief seeking to deny a disabled defendant access to his own trial.

Pryor argued that the constitutional guarantees of equal protection and due process '[do] not require a State to provide unassisted access to public buildings' and even took the extraordinary position that there is no absolute right for a defendant to be present at his own criminal trial, stating that 'even as to parties in legal proceedings, there is no absolute right to attendance.' The Supreme Court rejected these extreme positions advocated by Pryor.

Pryor's repeated attempts to use judicial means to undo the legislation protecting basic civil rights raise questions about both his willingness to protect individual's civil rights and his propensity to judicial activism – using the courts as a partisan vehicle to undo legislation he does not support.

Supporters of Judge Pryor's nomination point to his brief record as a recess appointee to the Eleventh Circuit as evidence of Judge Pryor's ability to set aside his strong political views. While Judge Pryor, in his short tenure on the Eleventh Circuit has not authored any particularly controversial opinions, decisions he has written addressed what are largely technical and uncontroversial legal issues.

Judge Pryor's brief stint as a recess appointee may or may not offer a representative preview of the opinions he would render as a lifetime member of the Eleventh Circuit.

Ultimately, my concern is that Judge Pryor does not display the dispassionate, independent view that we want from our judges. While in private practice, Pryor's commitment to the Republican Party apparently interfered with his representation of clients. Valstene Stabler, a partner at the Birmingham firm of Walston, Stabler, Wells, Anderson & Baines, described Pryor as being 'so interested in what the Republican Party was doing in the state, he was having trouble devoting attention to his private clients.'

A Washington Post editorial observed that:

> ‘Mr. Pryor’s speeches display a disturbingly politicized view of the role of the courts. He has suggested that impeachment is an appropriate remedy for judges who ‘repeatedly and recklessly . . . overturn popular will and . . . rewrite constitutional law.’ And he talks publicly about judging in the vulgarly political terms of the current judicial culture war. He concluded one speech, for example, with the following prayer: ‘Please, God, no more Souters’ – a reference to the betrayal many conservatives feel at the honorable career of Supreme Court Justice David H. Souter.’

Republicans who have worked with Judge Pryor have voiced concerns over his ability to be an independent, non-partisan judge. Grant Woods, the former Republican Attorney General of Arizona said that ‘[he] would have great question of whether Mr. Pryor has an ability to be non-partisan. I would say he was probably the most doctrinaire and most partisan of any attorney general I dealt with in 8 years. So I think people would be wise to question whether or not he’s the right person to be non-partisan on the bench.’

A judge must be able to set aside his views and apply the law evenly and fairly to all. Mr. Pryor’s intemperate legal and political beliefs, and his strident statements and actions in furtherance those beliefs, that have led me to question whether he can be truly impartial.

Aside from his brief tenure on the Eleventh Circuit as a recess appointee, Judge Pryor has no judicial record upon which to evaluate him. Consequently, we must consider his fitness for the Eleventh Circuit on the basis of his actions and statements as Deputy Attorney General and Attorney General of Alabama. Looking back on this highly partisan and controversial tenure, I cannot vote for Judge Pryor’s confirmation to a lifetime appointment on the Eleventh Circuit Court of Appeals.”

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